

DEC 21 2007

REPLY UNDER 37 CFR 1.116 -

EXPEDITED PROCEDURE - TECHNOLOGY CENTER 2600

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Serial No. 09/966,407

Attorney Docket No. 10012345-1

Title: SELECTIVE COMMUNICATION IN A WIRELESS NETWORK BASED ON PEER-TO-PEER SIGNAL QUALITY

REMARKSClaim Rejections Under 35 U.S.C. § 112

Claim 12 was rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the Office Action asserts that if there is only one wireless network device, Applicant cannot generate a list of wireless network devices as claimed. Applicant respectfully traverses.

Applicant contends that a list can contain one or more members, and notes that the Office has repeatedly acknowledged this interpretation. *See, e.g.*, U.S. Patent No. 7,299,005, claim 1 ("a memory for storing a reference list that includes a list of one or more preferred frequency bandwidths"); U.S. Patent No. 7,254,593, claim 4 ("the identifier list includes one or more list entries"); U.S. Patent No. 7,240,194, claim 19 ("a local trusted root list that includes one or more digital identifiers"); and U.S. Patent No. 7,173,177, claim 1 ("wherein the play list includes one or more items"). Applicant thus contends that claim 12 is not indefinite as Applicant's use of the term "list" is consistent with accepted usage. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection under 35 U.S.C. § 112, second paragraph, and allowance of claim 12.

Claim Rejections Under 35 U.S.C. § 103Claims 1, 5, 12 and 18

Claims 1, 5, 12 and 18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Garceran et al. (U.S. Patent No. 6,522,888) in view of Comer (U.S. Patent No. 5,873,043). Applicant respectfully traverses.

Applicant notes that the body of the rejection references Olkkonen. However, as Applicant has previously distinguished the pending claims over the combination of Garceran et al. and Olkkonen et al., and the stated rejection is only in view of Garceran et al. and Comer, Applicant presumes that each reference to Olkkonen et al. was meant to address Comer.

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Applicant contends that Garceran et al. does not identify and prioritize wireless network devices as Applicant claims. In contrast, Garceran et al. is directed to a system for determining coverage in a wireless communications system using historical information gathered from wireless devices. *See*, Garceran et al., column 2, lines 7-34. Thus, Garceran et al. does not identify each detected wireless network device that matches a selection criteria as the Office Action asserts (page 2, second paragraph) because it seeks to utilize information from all wireless units with which it communicates.

In addition, the secondary reference of Comer is directed to a system for communicating with a cellular communications device by sending multiple paging messages via a cellular network control channel of a cellular mobile radiotelephone system and combining data values of the received pages to form a data sequence. *See*, Comer, column 8, line 66 through column 9, line 4. In providing for selective communication, Comer communicates a page containing specific identifiers. Only devices having a mask matching one of the specific identifiers of the page can enter a receive data state. Comer, column 30, lines 22-33. Applicant thus contends that Comer also does not identify each detected wireless network device that matches a selection criteria as claimed because it is the individual device that determines whether it is a targeted device, and the decision is based upon data contained within a page received by each device and not by supplemental information received from the device.

Claim 1 recites, in part, "in response to identifying each of the detected wireless network devices that match the selection criteria, associating the at least one signal quality with its respective wireless network device for each wireless network device that matches the selection criteria." While Applicant acknowledges that Garceran et al. stores signal quality information for wireless devices, and stores additional information associated with that signal quality information, Applicant contends that Garceran et al. stores this information regardless of whether a wireless device matches some selection criteria. In fact, any sorting of the database in Garceran et al. occurs after storing the information. Applicant thus contends that Garceran et al. cannot store its database information in response to identifying a detected wireless network device as matching a selection criteria. The secondary reference of Comer fails to cure this deficiency in Garceran et al. In particular, as noted above, Comer does not teach or suggest identifying each of the detected wireless network devices that matches a selection criteria.

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Applicant thus contends that Comer also cannot teach or suggest associated any signal quality with its respective wireless unit for each wireless unit matching a selection criteria. Even if the act of a wireless unit of Comer entering a data receive state in response to matching an identifier of a received page to a mask contained in the wireless unit could be considered to be identifying a wireless network device that matches a selection criteria, which Applicant denies, Comer teaches that the response of its wireless unit to such a match is to merely enter a data receive state. This is wholly unrelated to associating a signal quality with its respective wireless network device. Applicant thus contends that the cited references, taken either alone or in combination, fail to teach or suggest at least these limitations of Applicant's claim 1.

Claim 1 further recites, in part, "prioritizing the wireless network devices that match the selection criteria based on their associated at least one signal quality." The Office Action asserts that Comer teaches this limitation of claim 1. Office Action, page 3, first paragraph (citing column 29, lines 28-40). However, the cited section of Comer merely refers to a process of verifying that a data sequence constructed from a series of received command pages can be accepted for operation by the cellular communications device. There is no teaching or suggestion of prioritization in this cited passage or elsewhere in Comer. As such, Applicant contends that the cited references, taken either alone or in combination, fail to teach or suggest at least this limitation of Applicant's claim 1.

Applicant further contends that it would require a change in the principle of operation in Garceran et al. to be modified in this manner to include prioritization. See MPEP § 2143.01 (if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious). Because Garceran et al. is concerned with developing coverage information, it is irrelevant whether a devices matches some selection criteria as the system of Garceran et al. is communicating with, and collecting information from, each detected wireless device. As such, prioritization would be an unnecessary and wasted effort. Thus, Applicant contends that it is improper to combine these references in support of a rejection under 35 U.S.C. § 103(a).

Applicant further contends that Garceran et al. and Comer are non-analogous arts. Specifically, Garceran et al. is directed to determining coverage in a wireless communications

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system. *See, e.g.,* Garceran et al., Abstract. In contrast, Comer is directed to the communication of multiple page messages and combining the data obtained from each received page to form an aggregate message. *See, Comer, Abstract.* Applicant contends that determination of coverage in a wireless communications system is wholly unrelated to the function of creating aggregate messages from multiple page messages. Applicant further contends that a person having ordinary skill in the art would not reasonably have expected to solve any problem identified in Garceran et al. using the message communication teachings of Comer. *Cf. MPEP § 2141.01(a)(II) and (a)(V).* As such, Applicant respectfully submits that the references cannot be properly combined in support of a rejection under 35 U.S.C. § 103(a), and the rejection is therefore improper.

Claim 12 recites, in part, “associating the signal quality with the wireless network device in response to determining that it is of the desired type and it has the desired status.” As noted with respect to claim 1, even if combination of the references is proper, which Applicant denies, Applicant contends that the references, taken either alone or in combination, fail to teach or suggest at least this limitation. Claim 12 further recites, in part, “generating a list of wireless network devices that are of the desired type and have the desired status.” The Office Action asserts that Garceran et al. satisfies this limitation. Office Action, page 4, first paragraph. However, Applicant contends that the cited section of Garceran et al. only refers to the collection of information for a given wireless device and does not purport to teach or suggest the generation of a list of wireless network devices having a desired type and a desired status. The secondary reference of Comer is not cited to cure this deficiency in Garceran et al. and Applicant contends that it cannot do so. As such, Applicant contends that the references, taken either alone or in combination, further fail to teach or suggest at this limitation of claim 12.

Claim 18 recites, in part, “if a wireless network device matches the selection criteria, associating that wireless network device and its supplemental information with its at least one signal quality.” As noted with respect to claim 1, even if combination of the references is proper, which Applicant denies, Applicant contends that the cited references, taken either alone or in combination, fail to teach or suggest at least this limitation.

In view of the foregoing, Applicant contends that independent claims 1, 12 and 18 are patentably distinct over the cited references, taken either alone or in combination. As claim 5

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includes all patentable limitations of claim 1, this claim is also believed to be allowable.

Applicant thus respectfully requests reconsideration and withdrawal of the rejections under 35 U.S.C. § 103(a), and allowance of claims 1, 5, 12 and 18.

Claims 2-4, 6, 8-11, 15-17 and 19

Claims 2-4, 6, 8-11, 15-17 and 19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Garceran et al., in view of Comer and further in view of Olkkonen et al. (U.S. Patent No. 6,842,460). Applicant respectfully traverses.

Applicant contends that it has shown claims 1, 12 and 18 to be patentably distinct from the primary reference of Garceran et al. and the secondary reference of Comer, taken either alone or in combination. The tertiary reference of Olkkonen et al. is not asserted to overcome the noted deficiencies of the primary and secondary references with respect to claims 1, 12 and 18, and Applicant contends that it cannot do so. Accordingly, Applicant contends that claims 1, 12 and 18 are patentably distinct from the cited references, taken either alone or in combination. As claims 2-4, 6 and 8-11 include all patentable limitations of claim 1, claims 15-17 include all patentable limitations of claim 12, and claim 19 includes all patentable limitations of claim 18, these claims are also believed to be allowable. Applicant thus respectfully requests reconsideration and withdrawal of the rejection under 35 U.S.C. § 103(a), and allowance of claims 2-4, 6, 8-11, 15-17 and 19.

Claim 7

Claim 7 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Garceran et al., in view of Comer and further in view of Terlep et al. (U.S. Patent No. 5,976,777). Applicant respectfully traverses.

Applicant contends that it has shown claim 1 to be patentably distinct from the primary reference of Garceran et al. and the secondary reference of Comer, taken either alone or in combination. The tertiary reference of Terlep et al. is not asserted to overcome the noted deficiencies of the primary and secondary references with respect to claim 1, and Applicant contends that it cannot do so. Accordingly, Applicant contends that claim 1 is patentably distinct from the cited references, taken either alone or in combination. As claim 7 includes all

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patentable limitations of claim 1, this claim is also believed to be allowable. Applicant thus respectfully requests reconsideration and withdrawal of the rejection under 35 U.S.C. § 103(a), and allowance of claim 7.

Claims 13-14 and 20

Claims 13-14 and 20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Garceran et al. in view of Comer and further in view of Dupray (U.S. Published Application No. 2004/0266457 A1).

Applicant contends that it has shown claims 12 and 18 to be patentably distinct from the primary reference of Garceran et al. and the secondary reference of Comer, taken either alone or in combination. The tertiary reference of Dupray is not asserted to overcome the noted deficiencies of the primary and secondary references with respect to claims 12 and 18, and Applicant contends that it cannot. Accordingly, Applicant contends that claims 12 and 18 are patentably distinct from the cited references, taken either alone or in combination. As claims 13-14 include all patentable limitations of claim 12, and claim 20 includes all patentable limitations of claim 18, these claims are also believed to be allowable. Applicant thus respectfully requests reconsideration and withdrawal of the rejection under 35 U.S.C. § 103(a), and allowance of claims 13-14 and 20.

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CONCLUSION

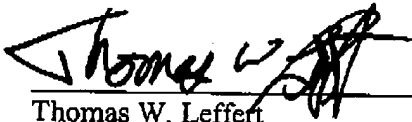
In view of the above remarks, Applicant believes that all pending claims are in condition for allowance and respectfully requests a Notice of Allowance be issued in this case. Please charge any further fees deemed necessary or credit any overpayment to Deposit Account No. 08-2025.

If the Examiner has any questions or concerns regarding this application, please contact the undersigned at (612) 312-2204.

Respectfully submitted,

Date:

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